



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 32881154

Date: AUG. 20, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a copywriter, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner satisfied the initial evidentiary requirements for this classification but did not establish, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the foregoing analysis.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner is an advertising copywriter with more than 16 years of experience developing “brand voice in print, digital and social channels.” He has worked on nationally and internationally recognized advertising campaigns, and has worked with leading brands, including Gillette, Uber, Mastercard, and Wyeth Laboratories. The Petitioner’s work has earned several awards from 2009 to 2022. He has served as a judge for various regional and international advertising awards, including the Anthem, Webby, Lovie, and Luxury Advertising awards. The Petitioner has also published articles about the field of advertising copywriting since 2022.

### A. Evidentiary Criteria

As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed that he could meet seven of these criteria, and the Director agreed with six of these. Specifically, the Director concluded that the Petitioner satisfied the following criteria under 8 C.F.R. § 204.5(h)(3):

- (i), Lesser nationally or internationally recognized awards;
- (ii), Memberships in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original artistic contributions of major significance in the field;
- (vi), Authorship of scholarly articles in professional or trade publications; and
- (viii), Performance in a leading or critical role for organizations that have a distinguished reputation.

Although the Director did not provide an analysis of the evidence submitted in support of this criterion, she concluded that the Petitioner did not establish eligibility under 8 C.F.R. § 204.5(h)(3)(vii), display of work in the field at artistic exhibitions or showcases.

Because the Petitioner demonstrated that he met the initial evidence requirements, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner's accomplishments and weigh the totality of the evidence to determine if they are among the small percent at the top of their field and have sustained national or international acclaim sufficient to demonstrate that they have extraordinary ability in the field of endeavor. As noted above, in a final merits determination, the Director looks at whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>1</sup>

#### B. Final Merits Determination

As noted above, the Director concluded that the Petitioner did not establish that he has sustained national or international acclaim and is among the small percentage at the very top of his field. On appeal, the Petitioner submits a brief and references evidence already in the record, including evidence of his participation as a judge of the work of others in advertising in 2022, evidence of articles he wrote in 2022, and evidence of the Petitioner's award for copywriting in 2021. The Petitioner also submits evidence of a 2024 interview he gave that was published on the website AdForum, where he discusses his selection as a member of the jury for the PHNX Awards, a competition to recognize achievements in the advertising community. While the Petitioner notes that this evidence occurred after the date of filing, he states that the interview is submitted as evidence that he "continues to be active in his field to this day."

Here, we remand the matter as the Director's decision did not apprise the Petitioner of the deficiencies in the evidence of record. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if he is among the small percent at the top of his field and has sustained national or international acclaim to demonstrate that he has extraordinary ability in the field of endeavor.<sup>2</sup>

Here, in the final merits analysis the Director lists the evidence that the Petitioner submitted to demonstrate the claimed evidentiary criteria. However, without explanation the Director concludes that the evidence does not establish that the Petitioner "is among the small percentage at the very top of the field of endeavor." The Director includes no discussion in the final merits analysis of the Petitioner's

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<sup>1</sup> *See also* 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual>.

<sup>2</sup> *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. *See also* U.S. Citizenship and Immigration Services (USCIS) Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 4 (Dec. 22, 2010) (Policy Memo), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

evidence of his original artistic contributions of major significance in the field under 8 C.F.R. § 204.5(h)(3)(v).

Further, the Director makes contradictory conclusions on whether the Petitioner met the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(vii). First, the Director states, without analysis, that the Petitioner “provided documentation, but failed to establish eligibility” based on evidence of the display of his work in the field at artistic exhibitions or showcases. Then, in the final merits analysis, the Director states, “With respect to [the Petitioner’s] display of his work ... [w]hile the evidence may show [he] meets the first part, he has not offered sufficient documentation to establish that being a participant for [advertising copywriting] awards are consistent with being among the small percentage at the top of the field or having a ‘career of acclaimed work.’”

The Director’s decision is unclear regarding the overall basis of denial related to the final merits determination and does not offer an accurate analysis of the evidence to allow the Petitioner a meaningful opportunity to prepare an appeal. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Notwithstanding the deficiencies in the Director’s decision and our withdrawal thereof, the record does not appear to demonstrate that the Petitioner, by a preponderance of the evidence, has sustained national or international acclaim, is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. However, because the Director’s decision does not provide sufficient analysis to allow the Petitioner to develop a meaningful appeal, we will remand the matter for entry of a new decision, and further consideration of whether the Petitioner can establish that he has extraordinary ability in the field of copywriting.

**ORDER:** The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.